

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

LAWRENCE H. DAVIS,  
  
Plaintiff,  
  
v.  
  
STEVEN S. OWENS, et al.,  
  
Defendants.

Case No. 2:16-cv-02444-GMN-CWH

**REPORT AND RECOMMENDATION**

This matter is before the court on Nevada state-prison inmate Lawrence H. Davis' application to proceed *in forma pauperis* (ECF No. 4), filed on November 17, 2016. Although his handwriting is very faint and difficult to decipher, it appears that Davis brings a lawsuit under 42 U.S.C. § 1983 for violation of his due process rights, alleging his sentence was calculated incorrectly in a Nevada state court case and that his imprisonment is illegal. (Compl. (ECF No. 1-1).)

**I. IN FORMA PAUPERIS APPLICATION**

Davis submitted the affidavit required by 28 U.S.C. § 1915(a) showing an inability to prepay fees or costs or give security for them. Accordingly, the court will grant Davis' request to proceed *in forma pauperis*. The court now screens Davis' complaint.

**II. SCREENING**

Courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). In addition to the screening requirements under § 1915A, the Prison Litigation Reform Act

1 requires a federal court to dismiss a prisoner's claim if it "fails to state a claim on which relief  
2 may be granted." 28 U.S.C. § 1915(e)(2); *accord* Fed. R. Civ. Proc. 12(b)(6).

3 Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for  
4 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668  
5 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient  
6 factual matter, accepted as true, to state a claim to relief that is plausible on its face." *See*  
7 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and  
8 may only dismiss them "if it appears beyond doubt that the plaintiff can prove no set of facts in  
9 support of his claim which would entitle him to relief." *Nordstrom v. Ryan*, 762 F.3d 903, 908  
10 (9th Cir. 2014) (quoting *Iqbal*, 556 U.S. at 678).

11 In considering whether the complaint is sufficient to state a claim, all allegations of  
12 material fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar*  
13 *Summit P'ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted).  
14 Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff  
15 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S.  
16 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.*  
17 Unless it is clear the complaint's deficiencies could not be cured through amendment, a pro se  
18 plaintiff should be given leave to amend the complaint with notice regarding the complaint's  
19 deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

20 Here, Davis seeks damages under 42 U.S.C. § 1983 for violation of his constitutional  
21 rights in the state court criminal proceedings. If a § 1983 case seeking damages alleges  
22 constitutional violations that would necessarily imply the invalidity of a conviction or sentence,  
23 the prisoner must establish that the underlying sentence or conviction has been invalidated on  
24 appeal, by habeas petition, or through a similar proceeding. *See Heck v. Humphrey*, 512 U.S.  
25 477, 483-87 (1994). Under *Heck*, a party who was convicted of a crime is barred from bringing a  
26 suit under § 1983 if a judgment in favor of that party would necessarily imply the invalidity of the  
27 conviction or sentence. *See Whitaker v. Garcetti*, 486 F.3d 572, 581 (9th Cir. 2007) (citing *Heck*,  
28 512 U.S. at 114).

1 Davis' complaint directly attacks the validity of his criminal conviction and sentence. But  
2 Davis does not allege his conviction or sentence has been reversed or otherwise invalidated.  
3 Given that this §1983 necessarily implies the invalidity of Davis' conviction or sentence, the  
4 court will recommend that his complaint be dismissed without leave to amend.

5 **III. CONCLUSION**

6 IT IS THEREFORE ORDERED that Davis' application to proceed *in forma pauperis*  
7 (ECF No. 4) is GRANTED. Davis will not be required to pay the filing fee in this action. Davis  
8 is permitted to maintain this action to conclusion without the necessity of prepayment of any  
9 additional fees or costs or the giving of a security for fees or costs. This order granting leave to  
10 proceed *in forma pauperis* does not extend to the issuance of subpoenas at government expense.

11 IT IS FURTHER ORDERED that the clerk of court must file Davis' complaint (ECF No.  
12 1-1).

13 IT IS RECOMMENDED that Davis' complaint be DISMISSED, with prejudice, for  
14 failure to state a claim upon which relief can be granted.

15 **IV. NOTICE**

16 This report and recommendation is submitted to the United States district judge assigned  
17 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation  
18 may file a written objection supported by points and authorities within fourteen days of being  
19 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely  
20 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d  
21 1153, 1157 (9th Cir. 1991).

22  
23 DATED: July 20, 2018

24  
25   
26 C.W. HOFFMAN, JR.  
27 UNITED STATES MAGISTRATE JUDGE  
28